UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,182	01/20/2000	Eric Jonathan Bauer	13-7-4	4052

7590 08/06/2004	**EXAMINER**
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1300 POST ROAD	**ART UNIT** | **PAPER NUMBER**
SUITE 205	2666
FAIRFIELD, CT 06430	

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/488,182
Filing Date: January 20, 2000
Appellant(s): BAUER ET AL.

Kevin Mason
For Appellant

EXAMINER'S ANSWER

1. This is in response to the appeal brief filed 5/17/2004.

2.   A statement identifying the real party in interest is contained in the brief.

3.   A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

4.   The statement of the status of the claims contained in the brief is correct.

5.   The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

6.   The summary of invention contained in the brief is correct.

7.   The appellant's statement of the issues in the brief is correct.

8.   Appellant's brief includes a statement that the rejected claims stand and fall together.

9.   The copy of the appealed claims contained in the Appendix
to the brief is correct.

| 6389005 | Cruickshank | 5-2002 |
| 6006259 | Adelman et al. | 12-1999 |

10. Claims 1,4,7, and 10 rejected under 35 U.S.C. 102(e). This
rejection is set forth in a prior Office Action, mailed on
9/26/2003.

Claims 2,5,8, and 11 rejected under 35 U.S.C. 103(a). This
rejection is set forth in a prior Office Action, mailed on
9/26/2003.

Response to Argument

11. The applicant argues that Cruickshank monitors QoS
parameters such as packet delay, packets dropped and throughput;
Cruickshank does not address monitoring congestion (applicant:
pg. 3 lines 24-25). The examiner disagrees. The examiner
maintains that by monitoring parameters such as packet delay,
packets dropped and throughput, Cruickshank is inherently
monitoring congestion.

The applicant argues that there is a difference between monitoring the QoS parameters taught by Cruickshank and the monitoring of congestion, as required by the present invention (applicant: pg. 3 lines 26-28). However, the applicant teaches monitoring packet loss and packet delay in order to set the congestion indicator flag (spec: pg. 8 lines 9-14). Therefore, both Cruickshank and the applicant are monitoring packets dropped/loss and throughput/delay in order to determine if congestion exists in the network.

The applicant argues (pg. 4 line 23 - pg. 5 line 5) that Cruickshank supports the argument that the monitoring of QoS parameters taught by Cruickshank and the monitoring of congestion are different since Cruickshank teaches the delays are assumed due to congestion (Cruickshank: col. 2 lines 46-49). The examiner disagrees. As stated previously, both Cruickshank and the applicant are monitoring the same parameters to determine if the network is congested.

The applicant argues that Cruickshank does not teach a congestion indicator (applicant: pg. 5 lines 13-14). As mentioned in the prior office action, Cruickshank does teach a congestion status indicator (Cruickshank: fig. 3b box 134, col. 2 lines 32-36). Cruickshank teaches the congestion indicator is the QoS. This is determined by measuring packet delay, packets

dropped, and throughput. As previously stated, the applicant

also determines congestion by monitoring packets dropped/loss

and throughput/delay.

The applicant further argues that Cruickshank does not

teach congestion data (applicant: pg. 5 lines 13-14). As

mentioned in the prior office action, Cruickshank does teach

congestion data (fig. 3B box 136 "Y"). Note, in Cruickshank, if

the congestion data indicates the path is congested, the flag is

set to "Y" and the call is routed through the PSTN.

12. For the above reasons, it is believed that the rejections
should be sustained.

Respectfully submitted,

Ronald Abelson

Ronald Abelson
Examiner
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July 30, 2004

Conferees
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